IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2514 of 2004
with
Civil Application No. 8290 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NATIONAL INSURANCE CO LTD.

Versus

KHERUNBAI SALIMBHAI KAZI

Appearance:
1. First Appeal No. 2514 of 2004
MR MEHUL SHARAD SHAH for Appellant
MR GAURANG H BHATT for Respondent No. 1
RULE NOT RECD BACK for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 22/12/2004

ORAL JUDGEMENT

1. By filing instant appeal under Section 173 of the

Motor Vehicles Act, 1988 ('the Act' for short), the appellant- National Insurance Company Limited, seeks to challenge the order dated July 22, 2004 recorded below application Ex.5 in MACP No.247 of 2000 by the Motor Accident Claims Tribunal (Aux.) Gondal by which the appellant is ordered to pay to respondent No.1/original claimant in the claim petition a sum of Rs.25,000/- together with interest at the rate of 9% per annum from the date of the application till realization jointly and severally with respondent No.3 herein, who is the owner of the vehicle involved in the accident, by way of compensation under the 'no fault liability' principle under Section 140 of the Act.

2. Respondent No.1 who is the claimant filed MACP No.247 of 2000 before the MACT (Aux.) Gondal under Section 166 of the Act claiming compensation of Rs. 1 lakh for the injuries sustained by her as a result of the accident which had taken place on 16.1.2000 at 7.00 7.30 P.M. at Jesang Kala Chowk at Gondal wherein auto-rickshaw bearing registration No.GRO 1785 belonged to respondent No.3 was involved. It is pleaded that the claimant while going from her residence towards the market, the offending vehicle came from behind and knocked her down as a result of which she fell down and received various injuries including fracture of left elbow which has resulted in permanent partial disability.

3. In the claim petition the claimant has filed an application under section 140 of the Act claiming interim compensation of Rs.25,000/- The Tribunal after considering the FIR, copy of charge sheet, panchnama, injury certificate, insurance policy, RTO registration book, etc., came to the conclusion that the vehicle owned by respondent No.3 was involved in the accident and the said vehicle was insured with the appellant at the relevant time and as a result of the accident the claimant sustained serious injuries including fracture which has resulted into permanent partial disability and therefore awarded Rs.25,000/- by way of interim compensation to the claimant under 'no fault liability' participle, which has given rise to this appeal.

4. Mr. Mehul Sharad Shah, learned advocate of the appellant, has contended that there is no evidence to the effect that the very vehicle was involved in the accident as in the FIR, panchnama and copy of charge sheet, registration number of the vehicle is not mentioned but only the name of the owner of the vehicle is mentioned and therefore the Tribunal has misdirected itself in considering the involvement of the very vehicle in the

accident in question which has resulted in miscarriage of justice. He, therefore, urged that the appeal may be allowed and thereby the order of the Tribunal granting Rs.25,000/- to the claimant by way of interim compensation under 'no fault liability' principle deserves to be quashed and set aside and in the alternative he urged that this Court may direct for expeditious disposal of the MACP No.247 of 2000.

5. In counter submission, Mr. Gaurang Bhatt, learned advocate of respondent No.1/original claimant, has submitted that application filed under section 140 of the Act is to be dealt with in accordance with Rule 231 of the Gujarat Motor Vehicles Rules, 1989 ('the Rules' for short) and as per sub-rule 5 of Rule 231 of the Rules, the Tribunal shall follow the procedure of summary trial as contained in Chapter XXI of the Code of Criminal Procedure 1973 and the applicant has to submit the following documents as per sub-rule (2) of Rule 231 of the Rules:

(i) First Information Report;
(ii) Injury certificate or post-mortem report in case of death;
(iii) Heirship certificate in case of death;
(iv) Certificate from the registering authority regarding ownership of the vehicle involved in the accident;
(v) Particulars of insurance of the vehicle involved in the accident.

In instant case, the claimant has produced all the required documents and therefore the Tribunal has very rightly reached to the conclusion that the claimant is entitled to receive Rs.25,000/- by way of interim compensation under 'no fault liability' principle.

6. This Court has considered the submissions advanced by the learned advocates appearing for the parties and also perused the averments made in the memo of appeal and the impugned order as well as the documents supplied by the learned advocates during the course of their submissions.

7. It may be appreciated that the amount awarded under No Fault Liability Principle, that is, under Section 140 of the Act is an interim compensation and obviously it is subject to the adjustment against the final award that will be passed in the MACP No.247 of 2000 which is still pending before the Tribunal. This principle is established by the Supreme Court in the case of the Oriental Insurance Co. Ltd. v. Hansrajbhai V.

Kodala, 2001 (4) JT 477.

8. On perusal of the impugned order, it is seen that the Tribunal has observed that the auto-rickshaw bearing registration No.GRO 1785 which was owned by respondent No.3 was involved in the accident and as a result of the rash and negligent driving on the part of its driver the accident had taken place and the claimant sustained injuries in the nature of fracture on left elbow which has resulted into permanent partial disability. The Tribunal for coming to the aforesaid conclusion has mainly relied upon FIR, Panchnama, injury certificate, insurance policy and RTO registration papers and the Tribunal on satisfying on the aforesaid aspect held that by virtue of Section 140 of the Act that the claimant is entitled to receive Rs.25,000/- by way of interim compensation under 'no fault liability' principle.

9. So far as the contention advanced by Mr. Mehul Sharad Shah, learned advocate of the appellant, with respect to non-involvement of the vehicle is concerned, it can be raised at the appropriate time in the main substantive claim petition which is still pending before the Tribunal. If the appellant raises the said contention before the Tribunal, the Tribunal shall decide the same in accordance with law.

10. In aforesaid view of the matter, this Court does not see any justifiable ground or valid reason to interfere with the impugned order at this stage. However, with a view to safeguard the interest of the appellant, an undertaking of the claimant is required to be obtained so that the claimant shall not abandon the main claim petition and withdraw the amount with a view to fritter away the amount of compensation of Rs.25,000/with interest thereon which is awarded in her favour.

11. In this view of the matter, it is directed that the original claimant shall file a solemn undertaking before the Tribunal within a period of four weeks of the service of this order to the effect that the main claim petition shall not be abandoned, shall not be withdrawn and shall not be permitted to be dismissed for default or for any other cause and that the claimant shall obtain a decision on merit in the said claim petition. The amount awarded under the impugned order shall be adjusted against the final award that will be passed in the main claim petition. On the undertaking being filed by the claimant, as aforesaid, out of the amount deposited under the impugned order, 50% of the amount may be permitted to

be withdrawn by the original claimant on furnishing security to the satisfaction of the Tribunal on the terms and conditions of the impugned order whereas rest of the 50% amount shall be invested in any national bank in the name of the Nazir of the concerned Tribunal/Court in a cumulative scheme yielding higher rate of interest for the period till the main claim petition is finally decided.

12. Subject to the aforesaid observation and direction, the appeal is dismissed. No order as to costs.

13. If any amount in this matter is deposited with the registry of this Court, the said amount shall be transmitted to the concerned Tribunal forthwith.

14. Since the appeal is dismissed, the Civil Application for stay of the impugned order now does not assume no survival value and hence it is also dismissed. Rule is discharged with no order as to costs. Interim relief granted earlier stands vacated.

Direct service is permitted.

(A.M. Kapadia, J.)

(karan)